

## Right-of-Way License and Municipal Facilities Use Agreement Between the Town of Addison, Texas and RedMoon Broadband, Inc allowing City-Wide Deployment of Wi-Fi Broadband.

This Right-of-Way License and Municipal Facilities Use Agreement ("License Agreement") is entered into by and between the Town of Addison, a Texas municipal corporation (the "City"), and RedMoon Broadband, Inc., a Delaware corporation ("RedMoon") (sometimes referred to herein together as the "parties" and individually as a "party").

### Recitals

A. RedMoon, whose principal office is located at 625 Digital Dr., Suite 500, Plano, TX 75075, owns, maintains, and operates, in accordance with regulations promulgated by the Federal Communications Commission, a wireless broadband digital data communications radio network, popularly known as "Wi-Fi", utilizing Radios (as defined in Section 1.13 of this Agreement) and related equipment certified by the Federal Communications Commission.

B. For purpose of operating Wi-Fi, RedMoon wishes to locate, place, attach, install, operate, and maintain Radios in the Municipal Rights-of-Way and Easements (as defined in Section 1.10 below) on Municipal Facilities (as defined in Section 1.9 below), as well as on facilities owned by third parties therein as described in Exhibit B, attached hereto.

### Agreement

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

RedMoon agrees it shall provide Services, as defined herein, to the entire City within 120 days of the execution of this License Agreement, as described in Exhibit B, attached hereto, and in accordance with the terms of this License Agreement.

**1 DEFINITIONS.** The following definitions shall apply generally to the provisions of this License Agreement:

**1.1 *Abandoned.*** "Abandoned" or "abandonment" shall refer to any Radio installed on a Municipal Facility that has been left by RedMoon in an unused or non-functioning condition for more than one hundred and twenty (120) consecutive days, unless

RedMoon shall establish to the reasonable satisfaction of the City that the Radio(s) in question has(have) continued viability at its(their) location(s).

1.2 *Adjusted Gross Revenues.* “Adjusted Gross Revenues” means the gross dollar amount received by RedMoon for its Services (as defined in Section 1.15 below) provided to subscribers of the Services with billing addresses or with subscriber access points in the City, excluding (i) the Right-of-Way Fee, if any, payable pursuant to Section 4.1 *et seq.* below and any utility users’ tax, communications tax, or similar tax or fee; (ii) local, state, or federal taxes that have been billed to the subscribers and separately stated on subscribers’ bills; and (iii) revenue uncollectible from subscribers (*i.e.*, bad debts) with billing addresses in the City that was previously included in Adjusted Gross Revenues.

1.3 *Agency.* “Agency” means any governmental or quasi-governmental agency other than the City, including the Federal Communications Commission and the Public Utility Commission of Texas (PUC) (as such term is defined in Section 1.12 below).

1.4 *City.* “City” means the Town of Addison, Texas.

1.5 *Fee.* “Fee” means any assessment, license, charge, fee, imposition, tax, or levy of general application to entities doing business in the City lawfully imposed by any governmental body.

1.6 *Installation Date.* “Installation Date” shall mean the date that the first Radio is installed by RedMoon pursuant to this License Agreement.

1.7 *Laws.* “Laws” means any and all statutes, constitutions, laws, ordinances, resolutions, regulations, standards, codes, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City or other governmental entity or agency having joint or several jurisdiction over the parties to this License Agreement or either of them, and all subsequent amendments thereto, as may be in effect either as of the Effective Date or at any time during the presence of Radios in the Municipal Rights-of-Way and Easements or during the term of this Agreement.

1.8 *License Agreement.* “License Agreement” means this nonexclusive License Agreement.

1.9 *Municipal Facilities.* “Municipal Facilities” means City-owned street light poles, traffic signal poles, lighting fixtures, or other City-owned structures located within the Municipal Rights-of-Way and Easements and may refer to such facilities in the singular or plural, as appropriate to the context in which used. Such term expressly excludes those facilities designated by the City as being excluded in accordance with section 3.8 herein as not being Municipal Facilities for purposes of the License Agreement.

1.10 *Municipal Rights-of-Way and Easements.* “Municipal Rights-of-Way and Easements” means the space in, upon, above, along, across, and over the public streets, roads, and alleys, including all dedicated public utility easements as the same now or may hereafter exist, that are owned by the City.

1.11 *Person.* “Person” means an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, or any other form of business entity or association.

1.12 *PUC*“PUC” means the Public Utility Commission of Texas.

1.13 *Radio.* “Radio” means the radio equipment, whether referred to singly or collectively, to be installed and operated by RedMoon hereunder as a sending or receiving device, or both, for Wi-Fi and fixed wireless, and described in the attached appendix to this License Agreement. No Radio shall exceed 9 inches in height, 7 inches in depth, 13 inches in width without express written permission of the City. No other sort of equipment or facilities, telecommunications or otherwise, shall be deemed included in the term Radio.

1.14 *RedMoon.* “RedMoon” means RedMoon, Inc., a corporation duly organized and existing under the laws of the State of Delaware, and its lawful successors, assigns, and transferees.

1.15 *Services.* “Services” means only the wire-less broadband communication services provided through Wi-Fi or fixed wireless by RedMoon, which services consist principally of high speed wireless Internet access connectivity; provided, however, that “Services” shall not be construed, interpreted or applied to authorize either any

telecommunication service, whether a certificate is required by the PUC or not, or video programming or cable television services as defined in either state or federal law or any other services.

**1.16 Wi-Fi.** Wi-Fi means a wireless microcellular digital radio-based broadband communications network owned and operated by RedMoon.

**2 TERM.** This License Agreement shall be effective as of the day of adoption by the City Council (“Effective Date”) and shall extend for a term of five (5) years commencing on the Effective Date, subject only to the formal acceptance and execution by RedMoon, unless it is earlier terminated by either party in accordance with the provisions herein. However, if at any point RedMoon expands its services beyond the definition of Services in Section 1.15 of this License Agreement, it must notify the City of such plans prior to the implementation of the new Services and negotiate in good faith with the City any necessary amendments to this License Agreement or required franchise or other consents from the City to avoid interruption of the Services; provided, however, that the City's consent to or approval of any such amendment or franchise or other consent shall be in writing and subject to the City's sole and absolute discretion.

**3 SCOPE OF LICENSE AGREEMENT.** Any and all rights expressly granted to RedMoon under this License Agreement, which shall be exercised at RedMoon's sole cost and expense, shall be subject to all Laws, the prior and continuing right of the City under applicable Laws to use any and all parts of the Municipal Rights-of-Way and Easements exclusively or concurrently with any other Person or Persons or Agency or Agencies and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which affect or may affect the Municipal Rights-of-Way and Easements. Nothing in this License Agreement shall, or shall be deemed to, grant, convey, create, or vest in RedMoon a real property interest in land of any nature whatsoever, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this License Agreement shall be subject to the reasonable prior review and approval of the City. Further, RedMoon shall abide by and conform to the provisions of any relevant City ordinances or other Laws governing or regarding the use and/or occupancy of the Municipal Rights-of-Way and Easements or the

Services, and this License Agreement shall be interpreted in a manner to conform to the requirements of such City ordinances or other Laws .

**3.1 Attachment to Municipal Facilities.** Subject to the provisions of Section 3.5 and all other terms and conditions of this License Agreement, and to consultation with and approval of the City's Public Works Director and the General Services Director, as to placement or location of Radios or other facilities on or within Municipal Facilities, the City hereby authorizes and permits RedMoon to enter upon the Municipal Rights-of-Way and Easements and to locate, place, attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Radios in or on Municipal Facilities for the sole purposes of operating Wi-Fi and providing Services. In addition, subject to approval by the City's Public Works Director and the General Services Director and the provisions of Section 4.2 below, RedMoon shall have the right to draw electricity for the operation of the Radios from the power source associated with each such attachment to Municipal Facilities and compensate the City for the use of such power in addition to any other fees or charges imposed by this License Agreement or by other City ordinances or other Laws, unless payment is made directly to the electric power provider. This License Agreement assumes that there will be no more than two Radio devices per pole; however, in the event that additional Radio devices are required on a pole for the effective operation of the Wi-Fi system, City approval will not be unreasonably withheld, taking into due consideration public health, safety and welfare, and any aesthetic effect and any obtrusiveness of the Radios which may affect property values (as determined by the City). All work on Municipal Facilities shall be performed between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

**3.2 Attachment to Third-Party Property.** Subject to obtaining the permission of the owner(s) of the affected property, the City hereby authorizes and permits RedMoon to enter upon the Municipal Rights-of-Way and Easements and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of Radios in or on poles or other structures owned by public utility companies or other property owners and lawfully (or with the written consent of the City) located within the Municipal Rights-of-Way and Easements (the "Third-Party Property") as may be permitted by the public utility company or property owner, as the case may be. Upon

request, RedMoon shall furnish to the City documentation of such permission from the individual utility or property owner responsible. City agrees to provide to RedMoon, at no cost or expense to the City, such information as RedMoon may reasonably require in the course of obtaining where necessary the consents of third-party owners of property located in the Municipal Rights-of-way and Easements, provided such information is not privileged, proprietary or protected by law or agreement from disclosure.

**3.3 No Interference.** RedMoon in the performance and exercise of its rights and obligations under this License Agreement shall not interfere in any manner with the existence, maintenance, repair, replacement, enlargement, use, or operation, or termination of use or operation, of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, traffic signal equipment, aerial and underground electrical and telephone wires, cable television, and other telecommunications, utility, or municipal property, and including all facilities, equipment, and appurtenances related to any of the foregoing, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this License Agreement. Such non-interference by RedMoon shall include but not be limited to non-interference with other Wi-Fi operators or users in the City, or other radio-based City uses (such as for water meter reading, or for traffic signal controls), whether public or private. RedMoon will correct any interference problems attributed to its equipment, facilities, or operations with forty eight (48) hours of notification by the City; provided, however, that in cases of emergency or immediate threat to public safety, as determined in the sole discretion of the City, the City may shut down any RedMoon equipment, facilities, or operations and shall immediately notify RedMoon of the action.

**3.4 Compliance with Laws.** RedMoon shall comply with and be subject to all applicable Laws in the exercise and performance of its rights and obligations under this License Agreement.

**3.5 Obtaining Required Permits.** If the attachment, installation, operation, maintenance, or location of the Radios in the Municipal Rights-of-Way and Easements shall require any City, PUC, State or Federal permits, RedMoon shall, if required under

applicable Laws and/or City ordinances, apply for the appropriate permits and pay any standard and customary permit fees. City shall promptly respond in accordance with its standard practices to RedMoon's requests for permits and shall otherwise cooperate with RedMoon in facilitating the deployment of Wi-Fi in the Municipal Rights-of-Way and Easements in a reasonable and timely manner. RedMoon agrees to meet with the City annually to discuss the company's forthcoming projects and installations.

**3.6 Location of Radios.** After RedMoon's review of available street light maps, which City agrees to provide when reasonably available to the City, and prior to installation, placement, or deployment of the Radios, RedMoon shall furnish to the City a pole list and map (at appropriate scale) showing the proposed locations of RedMoon's planned initial installation of Radios (the "Facilities Map"). The City shall have fourteen (14) days following receipt of the Facilities Map to either approve, reject, or modify the same. RedMoon may not begin installation, placement, or deployment of the Radios until the Facilities Map has been approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed. Following completion of the initial installation, RedMoon shall promptly furnish to the City an updated Facilities Map showing the exact location of all Radios in the Municipal Rights-of-Way and Easements; provided, however, RedMoon shall not, without the prior written consent of the City, install or place a Radio at a location within the Municipal Rights-of-Way and Easements which is not shown on and included within the Facilities Map. RedMoon shall provide to the City supplemental documentation showing the relocation, removal and/or abandonment of existing Radios or the installation of new Radios within thirty (30) days of their relocation, removal, abandonment, or installation, as the case may be. This License Agreement shall allow RedMoon to install not more than sixty (60) Radios in the Municipal Rights-of-Way and Easements, which number may be increased only upon prior written approval by the City.

**3.7 License Agreement Extends Only to Installation of Radios.** The rights granted RedMoon under this License Agreement extend only to the installation of the Radios on Municipal Facilities in the manner described herein or on Third-Party Property in the manner provided in Section 3.2, and does not create any right to install different or additional communications or other facilities in the Municipal Rights-of-Way and

Easements or on Municipal Facilities or on Third-Party Property. Under no circumstances is the closing, excavation or opening of any Municipal Rights-of-Way and Easements authorized or permitted to be performed by RedMoon, its representatives, agents or contractors under this License Agreement. Should RedMoon decide to undertake an additional or different Services from those described under Section 1.15, or which requires a use of the Municipal Rights-of-Way and Easements other than for the location of Radios, then RedMoon will notify the City of this change or addition as soon as is practical, but no later than when the decision is made to proceed with the change or addition, and any such change or addition is and shall be subject to the terms and conditions of this License Agreement and to the prior written consent and approval of the City.

**3.8 Exclusion of Certain Municipal Facilities.** Prior to or after RedMoon furnishes the City with its initial Facilities Map, the City may in its sole discretion designate certain Municipal Facilities to be excluded from Municipal Facilities on which Radios may be installed by RedMoon, including, but not limited to, ornamental or similar specially-designed street lights, or other Municipal Facilities which in the reasonable judgment of the City Engineer do not have electrical service adequate or appropriate for RedMoon's Radios or cannot safely bear the weight or wind loading caused by the presence of RedMoon's Radios or would be rendered unsafe or unstable by the installation of a Radio.

**3.9 Engineer's Certification.** At the time of execution of this License Agreement RedMoon shall provide the City and attach to this License Agreement as Exhibits hereto a certified wind loading study and a certified attachment detail showing typical installation for the Radios, each of which shall be certified by a registered Professional Engineer, subject to review and approval of the City Engineer in accordance with the applicable engineering principals, as they may be determined by the City Engineer.

**4 COMPENSATION; UTILITY CHARGES.** RedMoon shall be solely responsible for the payment of all lawful Fees in connection with RedMoon's performance under this License Agreement, including those set forth below.



**4.1 Monthly Municipal Rights-of-Way Use Rental Fee and Municipal Facility Use Fee.** In order to compensate the City for RedMoon's entry upon and the use and deployment of its Radios and related equipment within the Municipal Rights-of-Way and placement of its Radios and related equipment on the Municipal Facilities, which the parties acknowledge are valuable properties, acquired and maintained at the public expense, which RedMoon could not otherwise acquire without substantial expense, RedMoon shall pay to the City a monthly fee (the "Municipal Rights-of-Way Use Rental Fee and Municipal Facility Use Fee") as described in and in accordance with the terms of Exhibit A, attached hereto and incorporated herein.

**4.2 Electricity Charges.** RedMoon shall be solely responsible for the payment of all electrical utility charges to the applicable utility company based upon the Radios' usage of electricity and applicable tariffs. RedMoon shall provide the City with documentation sufficient to demonstrate that it has established an unmetered rate for the consumption of electricity by the Radio(s) with the appropriate electricity distributor and/or supplier, as the case may be, to provide for its payment for the use of unmetered electricity to operate the Radio(s).

**5 REMOVAL AND RELOCATION OF RADIOS.** RedMoon understands and acknowledges that City may require RedMoon to remove or relocate one or more of its Radios from specific Municipal Rights-of-Way and Easements and Municipal Facilities, and RedMoon shall at City's direction remove or relocate such Radios at RedMoon's sole cost and expense, whenever City reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of, or use in connection with, a City project; (b) because the Radio has been Abandoned; (c) because the Radio is interfering with or adversely affecting proper operation of City -owned light poles, traffic signals, or other Municipal Facilities or other City property; (d) to protect or preserve the public health or safety or welfare; or (e) upon the expiration or termination of this License Agreement. In any such case, City shall use reasonable efforts to afford RedMoon a reasonably equivalent alternate location. If RedMoon shall fail to remove or relocate any Radios as requested by the City within a reasonable time under the circumstances in accordance with the foregoing provision, but in any event not to exceed thirty (30) days, City shall be entitled to remove or relocate the Radios at RedMoon's sole cost and expense, without further notice to

RedMoon, and RedMoon shall, within thirty (30) days following issuance of invoice to same, reimburse the City for its expenses incurred in the removal, relocation and disposal of the Radios. The provisions of this Section 5 and its further subsections shall survive the expiration or earlier termination of this License Agreement or renewal thereof.

**5.1 Relocations at RedMoon's Request.** In the event RedMoon desires to relocate any Radios from one Municipal Facility to another, RedMoon shall so advise City. City will use its reasonable efforts to accommodate RedMoon by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this License Agreement.

**5.2 Damage to Municipal Rights-of-Way and Easements or Municipal Facilities.** Whenever the installation, placement, attachment, repair, removal, operation, use, or relocation of Radios is required or permitted under this License Agreement, and such installation, placement, attachment, repair, removal, operation, use, or relocation shall cause the Municipal Rights-of-Way and Easements or Municipal Facilities to be damaged or to have been altered in such a manner as to make them unusable, unsafe, or in violation of electrical or other codes or other applicable Law, RedMoon, at its sole cost and expense, shall promptly repair and return the Municipal Rights-of-Way and Easements and Municipal Facilities in or on which the Radios are located to their original condition, as solely determined by the City, and in accordance with applicable Laws, normal wear and tear excepted. If RedMoon does not repair the Municipal Rights-of-Way and Easements and Municipal Facilities as just described, then the City shall have the option, upon fifteen (15) days' prior written notice to RedMoon, to perform or cause to be performed such reasonable and necessary work on behalf of RedMoon and to charge RedMoon for the proposed costs to be incurred or the actual costs incurred by the City with respect to such work. Upon the receipt of a demand for payment by the City, RedMoon shall within thirty (30) days reimburse the City for such costs.

## **6 INDEMNIFICATION AND WAIVER.**

(a) IN CONSIDERATION OF THE GRANTING OF THIS LICENSE AGREEMENT, REDMOON AGREES TO AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH (A) REDMOON'S PERFORMANCE OF THIS LICENSE AGREEMENT, (B) THE USE OF THE MUNICIPAL RIGHTS-OF-WAY AND EASEMENTS AND MUNICIPAL FACILITIES BY REDMOON, ITS OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONTRACTORS, SUBCONTRACTORS, ASSOCIATES, OR INVITEES, OR ANY PERSON FOR WHOM REDMOON IS LEGALLY LIABLE ("REDMOON PARTIES") IN CONNECTION WITH THIS LICENSE AGREEMENT, (C) THE CONDUCT OF REDMOON'S BUSINESS OR ANYTHING ELSE DONE OR PERMITTED BY REDMOON TO BE DONE IN OR ABOUT THE MUNICIPAL RIGHTS-OF-WAY AND EASEMENTS AND MUNICIPAL FACILITIES, (D) ANY BREACH OR DEFAULT IN THE PERFORMANCE OF REDMOON'S OBLIGATIONS UNDER THIS LICENSE AGREEMENT, (E) ANY MISREPRESENTATION OR BREACH OF WARRANTY BY REDMOON UNDER THIS LICENSE AGREEMENT, AND (E) WITHOUT LIMITING ANY OF THE FOREGOING, ANY ACT OR OMISSION OF REDMOON OR ANY OF REDMOON PARTIES UNDER, RELATED TO, OR IN CONNECTION WITH, THIS LICENSE AGREEMENT, INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, EXCEPT AS SPECIFICALLY LIMITED HEREIN.

(b) WITH RESPECT TO REDMOON'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A), REDMOON SHALL HAVE NO DUTY TO INDEMNIFY AN INDEMNITEE FOR ANY DAMAGES CAUSED BY THE SOLE

NEGLIGENCE OF THE INDEMNITEE, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(c) With respect to RedMoon's duty to defend set forth herein in subsection (a), RedMoon shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this License Agreement; provided however, that the City shall have the right to approve the selection of counsel by RedMoon and to reject RedMoon's selection of counsel and to select counsel of the City's own choosing, in which instance RedMoon shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The City agrees that it will not unreasonably withhold approval of counsel selected by RedMoon, and further, the City agrees to act reasonably in the selection of counsel of its own choosing..

(d) In the event that RedMoon fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this License Agreement, the City shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of RedMoon, and RedMoon shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the City in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(e) The defense, indemnity, and hold harmless obligations set forth in this Section or elsewhere in this License Agreement shall survive the expiration, termination, or cancellation of this License Agreement.

**6.1 Waiver of Claims.** RedMoon waives any and all claims, demands, causes of action, and rights it may assert against the City, its officials, officers, employees,

representatives, and agents on account of any loss, damage, or injury to any Radio or any loss or degradation of the Services or loss of any business (including loss of profits) as a result of any event or occurrence which is beyond the reasonable control of the City. Without limiting the foregoing, actions or omissions by Persons other than the City or its officials, officers, employees, and agents shall be deemed beyond the reasonable control of the City.

**6.2 Limitation of City's Liability.** The City, its officials, officers, employees, and agents shall be liable only as allowed by law and where subject to liability by law, such liability shall be limited solely to the cost of repair to damaged Radios arising from the negligence or willful misconduct of City, its officials, officers, employees, agents, or contractors.

### **6.3 Bond or Other Security**

**6.3.1** Prior to the commencement of any work under this License Agreement, RedMoon shall furnish or cause to be furnished and shall thereafter keep enforced to and in favor of the Town of Addison, Texas a good and sufficient bond, ("Performance and Surety Bond"), in the amount of Ten Thousand and No/100 Dollars (\$10,000.00), or such other comparable security instrument as may be approved by the City Attorney, to secure the faithful performance by RedMoon of all of the work, construction, installation, and removals required to be performed by RedMoon under this License Agreement, and payment of all Municipal Rights-of-Way and Easements Fees and Annual Fees as delineated in Section 4 of this License Agreement, within the time periods set forth hereunder.

**6.3.2** Before the surety is required to perform under the Performance and Surety Bond or before any sums are withdrawn from other security, the City shall give written notice to RedMoon:

- a) describing the act, default or failure to be remedied, or the damages, cost or expenses which the City has incurred by reason of RedMoon's act or default;

b) providing a reasonable opportunity as determined by the City and as set forth in the written notice for RedMoon to remedy the existing or ongoing default or failure, if applicable (for purposes hereof, a period of thirty (30) days shall be considered a reasonable opportunity to cure any default or failure, provided, however, that if the reason for the notice is the failure to provide a replacement bond at least fourteen (14) days prior to the expiration of a bond, a notice of seven (7) days shall be deemed reasonable and sufficient);

c) providing a reasonable opportunity for RedMoon to pay any monies due the City before the City withdraws the amount from the Performance and Surety Bond or other security, if applicable; and

d) stating that RedMoon will be given an opportunity to review the act, default, or failure described in the notice with the City Manager or the City Manager's designee;

.Notwithstanding the foregoing, the City shall have the right, in cases of emergency or immediate threat to public safety as determined in the sole discretion of the City, to abate any danger or threat from the operation of the Radios or other equipment of RedMoon, in accordance with Section 3.3 of this License Agreement (and including the shut down by the City of any RedMoon equipment, facilities, or operations).

6.3.3 RedMoon shall replenish the Performance and Surety Bond or other security within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the bond or security; provided, however, that this provision does and shall not relieve RedMoon from maintaining the Performance and Surety Bond and keeping it in full force and effect at all times during this License Agreement.

**7 INSURANCE.** RedMoon shall obtain and maintain at all times during the term of this License Agreement Commercial General Liability insurance (including without limitation contractual liability covering, but not limited to, the indemnification provisions of this License

Agreement) and Commercial Automobile Liability insurance protecting RedMoon in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury or death and property damage or destruction , and in an amount not less than Two Million Dollars (\$2,000,000) annual aggregate for each personal injury liability and products-completed operations. The Commercial General Liability insurance policy shall name the City, its council members, officers, and employees as additional insureds as respects any covered liability arising out of any act or omission of RedMoon under this License Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until the City has received at least thirty (30) days' advance written notice of such cancellation or change. RedMoon shall be responsible for notifying the City of such change or cancellation. All such insurance shall contain a waiver of subrogation endorsement in favor of the City. The City reserves the right to review the insurance requirements contained herein and to adjust coverages and limits when deemed necessary and prudent by the City.

**7.1 Filing of Certificates and Endorsements.** Prior to the commencement of any work pursuant to this License Agreement, RedMoon shall file with the City the required original certificate(s) of insurance with endorsements, which shall state the following:

- a. the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;
- b. that the City shall receive at least thirty (30) days' prior notice of cancellation or material modification;
- c. that RedMoon's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

- d. that RedMoon's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the City.

The certificate(s) of insurance with endorsements and notices shall be mailed to the City at the address specified in Section 8 below.

**7.2 Workers' Compensation Insurance.** RedMoon shall obtain and maintain at all times during the term of this License Agreement statutory workers' compensation and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) and shall furnish the City with a certificate showing proof of such coverage.

**7.3 Insurer Criteria.** Any insurance provider of RedMoon shall be admitted and authorized to do business in the State of Texas and shall carry a minimum rating assigned by *A.M. Best & Company's Key Rating Guide* of "A" Overall and a Financial Size Category of "X" (i.e., a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

**7.4 Severability of Interest.** Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the City. "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

**8 NOTICES.** All notices which shall or may be given pursuant to this License Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile or email transmission, if a hard copy of the same is immediately followed by delivery through the U. S. mail (registered or certified, postage prepaid) or by overnight delivery service as just described, addressed as follows:

*if to the City:*

TOWN OF ADDISON  
Attn: [Hamid Khaleghipour]  
[16801 Westgrove DR.]  
[Addison, Texas 75001]



*if to RedMoon:*

REDMOON, INC.  
Attn: [Bryan Thompson]  
[625 Digital Dr., Suite 500, Plano, TX 75075]

8.1 **Date of Notices; Changing Notice Address.** Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

9 **TERMINATION, Non-Material Breaches and Other City Remedies.** This License Agreement may be terminated by either party upon forty five (45) days' prior written notice to the other party upon a default of any material term hereof by the other party, which default is not cured to the reasonable satisfaction of the non-defaulting party within forty-five (45) days of receipt of written notice of default (or, if such default is not curable within forty-five (45) days, as reasonably determined by the City in its sole discretion, if the defaulting party commences such cure within forty-five (45) days but fails thereafter to diligently prosecute such cure to completion), provided that the grace period for any monetary default (including the failure to timely pay any Fees or compensation hereunder, or the failure to keep the Performance and Surety Bond, or the failure to maintain and keep in full force and effect the insurance set forth herein) shall be ten (10) days from receipt of notice. The parties agree material terms of this License Agreement shall include, but not be limited to, payment of any fees due the City hereunder that are more than thirty (30) days past due, provision of Services by RedMoon in a timely manner as required herein, provision of the performance bond, insurance and compliance with the indemnity provisions as required herein, timely relocation of RedMoon facilities as required herein, obtaining City permits or consent prior to use of Municipal Facilities, any required repair of City property damaged by RedMoon, provision of maps, engineering certificates and reports as required herein, payment of the liquidated damages as set forth in Section 9.1 below, and any other term or provisions which the City reasonably determines is material, including cumulative breaches of non-material provisions. Notwithstanding the provisions regarding the opportunity to cure defaults, the City may terminate this License Agreement without notice and an opportunity to cure (except as provided hereinafter) if (a)

RedMoon becomes insolvent, unable or unwilling to pay its debts, or adjudged bankrupt; (b) RedMoon Abandons its Radios and does not effectuate a cure within forty five (45) days of receipt of written notice from the City; (c) RedMoon attempts to or does practice any fraud or deceit in its conduct or relations with the City under this License Agreement; or (d) the City condemns substantially all of the property of RedMoon within the City by lawful exercise of eminent domain, in which case the parties shall, for a period of at least one hundred eighty (180) days, negotiate in good faith the possible relocation options for the Radios prior to the City's ability to terminate this License Agreement. Upon the expiration or earlier termination of this License Agreement, RedMoon shall promptly (but in any event not less than 30 days thereafter) remove from the Rights of Way all of its Radios or other property; in the event RedMoon fails to remove the same, the City shall have the right to remove the same at RedMoon's cost, and the City shall not be liable for any damage to such property resulting from such removal. RedMoon shall promptly reimburse the City for all cost of removal upon presentment of an invoice. The provisions of this Section 9 shall survive the expiration or earlier termination of this License Agreement or renewal thereof.

**9.1 Non-Material Breaches and Liquidated Damages.** In addition to any other rights or remedies available to the City hereunder or pursuant to law, equity or otherwise, if there is any breach of any non-material provision of this License Agreement by RedMoon, as reasonably determined by the City, the parties agree that the amount of damages to the City for such breach cannot reasonably be determined. In such event, the City shall provide written notice of such breach to RedMoon, and RedMoon shall have fourteen (14) days from its receipt of such written notice to cure the breach; if the non-material breach is not cured to the City's reasonable satisfaction within the said fourteen (14) day period, RedMoon shall pay the City \$50.00 for each day following the fourteen (14) period, until the non-material breach is cured. Payment of such amount is due and payable to the City by RedMoon not later than five (5) days following RedMoon's receipt of the assessment of the liquidated damages by the City. Failure to timely pay shall constitute a material breach. Such non-material breaches include, but are not limited to, as reasonably and solely determined by the City, payment of any fees due the City that are not paid on or before the date due the City (but are paid within 30 days from the due date), failure to timely notify of changed contact information and failure to notify of changed subscription rates.

**9.2 Other City Remedies.** Notwithstanding the terms of Sections 9 and 9.1 or any other provision of this License Agreement, the City, at its sole option, may separately or concurrently pursue any other rights or remedies at law, in equity, or otherwise which it has or may have in connection with or related to this License Agreement, including, without limitation, any right or remedy to enforce compliance with this License Agreement, for injunctive relief, for a declaratory judgment, and for a suit for damages, notwithstanding provisions in Section 9.1, if the City can reasonably determine the amount of actual damages a suit may brought for such damages, and in the event damages cannot be reasonably determined, then a suit may be brought to recover any unpaid liquidated damages due the City.

**10 ASSIGNMENT.** RedMoon shall not, and shall have no power or authority, to assign, sell, pledge, transfer, or otherwise convey (together "assign" or "assignment") this License Agreement, in whole or in part, without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. RedMoon shall not and shall have no power or authority to assign, whether to an affiliate or otherwise, all or any portion of its rights, duties, or obligations hereunder without first obtaining a written agreement from each such assignee, in form and content satisfactory to the City, whereby each assignee agrees to be bound by the terms and provisions of this License Agreement. Notwithstanding the foregoing, the transfer of the rights and obligations of RedMoon hereunder to an affiliate of RedMoon shall not be deemed an assignment for the purposes of this License Agreement, provided, however, that RedMoon shall promptly notify the City of such assignment. For purposes of this License Agreement, the term "affiliate" means a corporate parent of RedMoon which controls RedMoon (such as owning more than 50% of the shares of common stock of RedMoon), a partnership or joint venture in which RedMoon owns an interest of more than 50% and control the same, or a subsidiary entity of RedMoon in which RedMoon owns an interest of more than 50% and controls the same. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities or partnership interests, by contract, or otherwise.. Notwithstanding the above or any other provision of this License Agreement, any assignment by RedMoon, whether to an affiliate or otherwise, shall not and does not release RedMoon from its obligations, duties, and liabilities hereunder unless expressly agreed to in writing by the City.

If consent by the City to an assignment is required hereunder, RedMoon shall request, in writing, the City's consent to a proposed transfer and such request must include: (i) the name of the proposed assignee; (ii) the nature and character of the assignee's business; (iii) the term, use, rate, and all other material terms of the proposed assignment; and (iv) audited financial statements or other evidence of the proposed assignee's assets, liabilities, net cash flow, operating history, and other evidence the City may reasonably request to evaluate the financial capacity of the proposed assignee to perform its obligations.

**II MISCELLANEOUS PROVISIONS.** The provisions which follow shall apply generally to the obligations of the parties under this License Agreement.

**II.1 Nonexclusive Use.** RedMoon understands that this License Agreement does not provide RedMoon with exclusive use of the Municipal Rights-of-Way and Easements or any Municipal Facility and that City shall have the right to permit other providers of Wi-Fi, other wire-less broadband communication service providers, and other users of the Municipal Rights-of-Way and Easements or any Municipal Facility to install, use and operate equipment or devices in the Municipal Rights-of-Way and Easements and on Municipal Facilities in the City's lawful discretion.

**II.2 Waiver of Breach.** The waiver by either party of any breach or violation of any provision of this License Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this License Agreement. The City will not be deemed to have waived any of right of the City or RedMoon's breach or default of any obligation under this License Agreement, unless the City delivers a signed writing, addressed to RedMoon explicitly relinquishing that right, breach or default. No custom or practice arising during the administration this License Agreement will waive, or diminish, the City's right to insist upon strict performance of RedMoon's obligations.

**II.3 Severability of Provisions.** If any one or more of the provisions of this License Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this License Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this License Agreement. Each party

hereby declares that it would have entered into this License Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

**11.4 Contacting RedMoon.** RedMoon shall be available to the staff employees of any City department having jurisdiction over RedMoon's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Radios. The City may contact RedMoon via the Escalation List provided in the original RedMoon proposal.

**11.5 Governing Law; Jurisdiction.** This License Agreement shall be governed and construed by and in accordance with the laws of the State of Texas, without reference to its conflicts of law principles. If suit is brought by a party to this License Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Texas, Dallas County, or in the United States District Court for the Northern Federal District Court District of Texas located in Dallas County, Texas.

**11.6 Consent Criteria.** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this License Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

**11.7 Representations and Warranties.** Each of the parties to this Agreement represent and warrant that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in Section 3.2 above.

**11.8 Amendment of License Agreement.** This License Agreement may not be amended except pursuant to a written instrument signed by both parties.

**11.9 Exhibits.** All exhibits referred to in this License Agreement and any addenda, attachments, and schedules which may from time to time be referred to in any duly

executed amendment to this License Agreement are by such reference incorporated in this License Agreement and shall be deemed a part of this License Agreement.

**11.10 Successors and Assigns.** This License Agreement is binding upon the successors and assigns of the parties hereto.

**11.11 Advise of Displacement.** To the extent the City has actual knowledge thereof, the City will attempt promptly to inform RedMoon of the displacement or removal of any pole on which any Radio is located.

**11.12 No Third Party Beneficiaries.** This License Agreement creates no rights, title or interest in any Person whatsoever (whether under a third party beneficiary theory or otherwise) other than RedMoon and the City, and their respective officers, employees or other persons to the extent specifically named herein.

**11.13 Taxation.** The Municipal Facilities and the Municipal Rights-of-Way and Easements on which they are located are presently exempt from real estate taxes. In the event that this License Agreement, any provision thereof, or any use of the Municipal Right-of-Way or Municipal Facilities pursuant to the terms of this License Agreement shall result in said Municipal Right-of-Way, Municipal Facilities or any parts thereof becoming subject to such real estate taxes, then RedMoon shall be liable to the City for payment of such real estate taxes and shall reimburse the City for any such taxes paid within thirty (30) days following issuance of an invoice for same. RedMoon shall have the right to contest all taxes, assessments, charges and impositions as it may become liable for under this Section, and City agrees to join in such contest if required by law and to permit RedMoon to proceed with the contest in City's name, provided that the expense of the contest is borne solely by RedMoon. In the event City fails to timely notify RedMoon of such a real estate tax liability and that failure to timely notify results in the inability of RedMoon to file an appeal, then the City shall be liable for such real estate taxes for the affected year and RedMoon is relieved of such liability for the affected year. Notwithstanding anything in this License Agreement, nothing in this License Agreement shall be construed to prohibit the City from levying the usual general or special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, general sales and use tax, assessments for public improvements,

and sums to which the City may be entitled under Section 51.006 of the Texas Utilities Code (the Texas Public Utility Regulatory Act) or otherwise.

**11.14 Relationship of Parties.** RedMoon and City shall be and act as independent contractors, and under no circumstances shall this License Agreement be construed as one of agency, partnership, joint venture, joint enterprise, or employment between the parties.

**11.15 Advertising, Signs or Extraneous Markings.** RedMoon shall not place or cause to be placed any sort of signs, advertisements or other extraneous markings, whether relating to RedMoon or any other Person, on any Radio or other equipment located on a Municipal Facility or in the Municipal Right-of-Way, excepting such labels, numbers or other marks on the Radio(s) as are approved by the City, and are either reasonably necessary to identify the Radio or RedMoon for service, repair, maintenance or emergency purposes, or as may be otherwise required to be affixed by applicable law or regulation.

**11.16 Federal, State and City Jurisdiction.** This License Agreement shall be construed in a manner consistent with all applicable federal, state, and local Laws. Notwithstanding any other provisions of this License Agreement to the contrary, the construction, operation and maintenance of RedMoon's Radios shall be in accordance with all Laws and regulations of the United States, the state and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. Both parties acknowledge that the technical specifications of RedMoon's Radios are subject to the jurisdiction of the Federal Communications Commission. RedMoon shall meet or exceed the most stringent technical standards set by regulatory bodies, including the Federal Communications Commission, now or hereafter having jurisdiction. Any actual or anticipated radio interference caused by either the presence of the Radios or the presence of any such other communications equipment or devices in the Municipal Rights-of-Way and Easements shall be resolved by RedMoon and any such other providers without cost to the City on the basis of the applicable rules, regulations, practices and procedures of the Federal Communications Commission. RedMoon's rights are subject to the police powers of the City to adopt and enforce ordinances

necessary to the health, safety, and welfare of the public. RedMoon shall comply with all applicable Laws and ordinances enacted pursuant to that power. Additionally, pursuant to Section 3.4 and Section 9 of this License Agreement, failure by RedMoon to comply with any applicable Law or regulation may be considered a default of a material covenant or term of this License Agreement, subject to the cure provisions of Section 9.

**11.16.1 Emerging Technology/Governmental Regulation.** The parties acknowledge that Wi-Fi is an emerging technology and that governmental regulation, if any, over furnishing and deployment of Wi-Fi is undefined and may hereafter be subject to legislation or interpretation by state and federal agencies, legislatures, or courts. It is the intent of the parties to comply with any such regulation or interpretation to the extent applicable to the subject of this License Agreement, and the parties agree that if such future regulation or interpretation causes the performance of any part of this License Agreement by either party to be violative of Law or regulation, then the party's performance of such part of this License Agreement shall be waived and excused without liability for breach of this License Agreement by the non-performing party. In such event, except to the extent of such waived and excused part of this License Agreement, the remainder of the License Agreement shall continue in full force and effect.

Further, the parties acknowledge that Section 54.202, Texas Utilities Code, prohibits a Texas municipality or municipal electric system from offering for sale to the public a service, including service offered directly or indirectly through a telecommunications provider, for which a certificate of convenience of necessity, certificate of operating authority, or service provider certificate of operating authority from the PUC is required, or the offering for sale of a nonswitched telecommunications service used to connect a customer's premises with another customer's premises within the exchange or a long distance provider that serves the exchange. It is the parties' belief and intent that Section 54.202 does not prohibit the City from entering into this License Agreement with RedMoon in this deployment of Wi-Fi or in the compensation to the City required to be paid by RedMoon herein. Furthermore, RedMoon agrees that to the extent that any future ruling or binding interpretation of Section 54.202 by a state or federal agency or court prohibits the City from entering into this License Agreement or finds that City has otherwise violated Section 54.202, that the City's further performance



under this License Agreement may be discontinued as determined by the City (subject to such state or federal agency or court), and shall be waived by RedMoon.

#### **11.17 Reservation of Rights**

**11.17.1** In addition to any rights specifically reserved to the City by this License Agreement, the City reserves to itself every right and power available to it under the constitutions of the United States and the State of Texas, and any other right or power, including, but not limited to all police powers and authority to regulate and legislate to protect and promote the public health, safety, welfare, and morals, and including the possible removal and/or relocation of Radios pursuant to Section 5 of this License Agreement. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

**11.17.2** Notwithstanding anything to the contrary set forth herein, the provisions of this License Agreement shall not infringe upon the rights of any Person to any applicable state or federal statutes, including, but not limited to the right to occupy the Municipal Rights-of-Way and Easements.

**11.18 Entire Agreement.** This License Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this License Agreement which are not fully expressed herein.

**11.19 City's Notice of Wi-Fi Service Availability.** The City agrees it shall provide no fewer than four (4) times per year information in its water billing as to the availability of RedMoon Wi-Fi service in the City. The City agrees it shall also provide information concerning RedMoon Wi-Fi service in the City in its customary manner of informing citizens of services available in the City.

**11.20 RedMoon provision of Wi-Fi Service to City.** RedMoon shall also provide during the term of this License Agreement fifteen (15) free-of-charge, full-service monthly accounts to the City, the specific service as selected by the City in its sole discretion.

Such shall be furnished within the 120-day construction period. In any marketing material distributed by RedMoon during the term of this License Agreement it shall state that Wi-Fi service is available in the Town of Addison.

**11.21 Includes and Including.** For purposes of this Agreement, “includes” and “including” are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

In Witness whereof, and in order to bind themselves legally to the terms and conditions of this License Agreement, the duly authorized representatives of the parties have executed this License Agreement as of the Effective Date.

City: TOWN OF ADDISON, a Texas municipal corporation

By: \_\_\_\_\_  
Ron Whitehead  
[name typed]

Its: City Manager

Date: 2/15/2005

RedMoon: REDMOON BROADBAND, INC., a Delaware corporation,

By: \_\_\_\_\_  
Bryan Thompson  
[name typed]

Its: President/CEO

Date: 2/17/2005

EXHIBIT A (1 of 3 pages)

Municipal Rights-of-Way Use Rental Fee and Municipal Facility Use Fee as Compensation  
paid the City

As compensation to be paid to the City in consideration of RedMoon's use of Municipal Rights-of-Way and Easements and placements of Radios on Municipal Facilities RedMoon agrees it will compensate the City on a monthly basis, 30 days after the end of each month, by paying the following sums:

1. 10 % of the first \$20,000 of Adjusted Gross Revenue of each month is to be paid to the City, subject to 3 and 4, below, and,
2. 28 % on all Adjusted Gross Revenue over \$20,000 of each month is to be paid to the City, subject to 3 and 4, below.
3. Notwithstanding the above 1 and 2, and subject to 4 below, when the cumulative total Adjusted Gross Revenues equals or exceeds \$524,000, thereafter, subject to 4 below, the monthly Adjusted Gross revenue will first be reduced by the monthly maintenance cost, the resulting calculation being termed the "Net Adjusted Gross Revenue", and then 28% of the Net Adjusted Gross Revenue is to be paid to the City.

The network maintenance cost calculation shall be subject to review by the City and based upon reasonable costs and calculated in accordance with General Accepted Accounting Principles ("GAAP"). In October of 2004 the network maintenance cost is estimated to be \$7,500 per month.

The formula for the payments to the City once the cumulative Adjusted Gross Revenue is \$524,000 or above, thereafter, subject to 4 below, will be as follows:

Monthly Payment to the City equals 28% of the Net Adjusted Gross Revenue (Monthly Adjusted Gross Revenue minus monthly network maintenance cost.)

4. Notwithstanding the above, if after 12 months from the date the first customer in the City has been served, if Adjusted Gross Revenues do not exceed \$12,000 per month, as averaged over a period of the preceding 2 months, or if there has been a decrease in total Adjusted Gross Revenues by 25% from the previous month, then RedMoon may adjust its pricing of its subscription model as submitted with its proposal of October 7, 2004. The subscription model on page 6 of the RedMoon proposal to the City, dated October 7, 2004, is incorporated herein for all purposes.

The Municipal Rights-of-Way Use Rental Fee and Municipal Facility Use Fee shall be commence accrual upon the date that Services are offered to commercially paying subscribers within the City using Radios installed pursuant to this License Agreement and shall end accrual on the date of termination of this License Agreement. Within thirty (30) days after the termination of this License Agreement, compensation shall be paid for the period elapsing since the end of the last month for which compensation has been paid.

5. RedMoon shall furnish to the City with each payment of compensation required by this section a statement, executed by an authorized officer of RedMoon or his or her designee, showing the amount of Adjusted Gross Revenues or Net Adjusted Gross Revenues, as applicable, for the period covered by the payment. If RedMoon discovers any error in the correct amount of compensation due, the City shall be paid within thirty (30) days of discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise shall be refunded or offset against the next payment due. Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this License Agreement occurring prior thereto, nor shall the acceptance by the City of any such

payments preclude the City from later establishing that a larger amount was actually due or from collecting any balance due to the City.

6. Notwithstanding the fees set out above, there shall be a minimum monthly Municipal Facility Use Fee for the placement of Radios and related equipment on Municipal Facilities which accrues at the time of the placement of the Radio on Municipal Facilities and which shall be paid monthly, 30 days after the end of the previous month in which the attachment was made. Such minimum monthly fee shall be at either the rate calculated on utility poles and conduits in accordance with the federal Pole Attachment Act, (47 USC Section 224), to the extent applicable, or the reasonable rental value of the other Municipal Facilities, as reasonably determined by the City, whichever is greater. By way of example, and being subject to changes based on market rates, at the time of the execution of this License Agreement, the monthly minimal rate for an attachment to a municipal street light or pole per Radio would be \$30.00 annually per pole or street light, the minimum monthly fee for an attachment to a City structure, such as a City building per site would be \$ 4,000/annually. To the extent the minimum Municipal Facility Use Fee payment is paid to the City, it may be taken as a credit against subsequent Municipal Rights-of-Way Use Rental Fee and Municipal Facility Use Fee payments to the City under paragraph 1-3 above.
7. Which each monthly payment RedMoon shall also submit a report in substantially the same form as is attached as Exhibit A.1. entitled, "REDMOON BROADBAND , INC., TOWN OF ADDISON REMITTANCE FORM - MONTHLY MUNICIPAL RIGHTS-OF-WAY USE FEE AND MUNICIPAL FACILITY USE FEE". Such form may be modified by the City to ensure proper compensation validation."

## EXHIBIT B

### Wi-Fi SERVICE CRITERIA

RedMoon shall provide ubiquitous Services, as defined in the License Agreement, including Wi-Fi services, to the entire City within 120 days of the execution of this License Agreement. (For purposes of this License Agreement the parties agree that “ubiquitous” shall mean city-wide service area coverage to the fullest extent reasonably and commercially attainable with use of state of the art equipment and technology during the term of this License Agreement. The parties further agree that “ubiquitous” is not a static term, but is a dynamic term and may be broader as state of the art equipment and technology advances to allow broader coverage areas in the City at a commercially reasonable cost during the term of this License Agreement.) The Wi-Fi service shall have a degree of reliability consistent with comparable systems through out the term of this License Agreement and support high-performance throughput (1+ Mbps burst speeds). The principal equipment that will be placed on Municipal Facilities and in Municipal Rights-of-Way and Easements shall be Tropos Model No. 5110 outdoor Wi-Fi cell devices/access points, or of devices of similar physical dimensions (13 in.Wide x 6 in. Deep x 8.5 in.Ht.) and technical capacity, deployed throughout the City. (Tropos technical information sheet is attached hereto and incorporated herein.)

The City-wide wireless mobile broadband network shall deliver throughput between 500 kbps and 5 Mbps throughout the City. Surrounding Addison Airport, there shall be provided in a frequency of 2.4 GHz to the access points. The Addison Airport property shall be an approximate coverage area of four (4) square miles from Trinity Mills Road to the north, to Addison Road to the east, to Belt Line Road to the south, and to Midway Road to the west. Approximately 2.5 miles from north to south and 1.5 miles from east to west are included in the coverage area. Additional unlicensed frequencies may be used by RedMoon to backhaul service into the 2.4 GHz mesh network.

The Wi-Fi City-wide mobile broadband network shall have security that will support WEP, WPA, AES, MAC, address filtering, and VPN security, when commercially available, and successor security systems during the term of this License Agreement.